

Submitted September 12, 2012  
Approved as of  
Date September 12, 2012

**MINUTES OF THE ROCKVILLE PLANNING COMMISSION  
MEETING NO. 15-2012  
Wednesday, July 11, 2012**

The City of Rockville Planning Commission convened in regular session in the Mayor and Council Chambers at 7:15 p.m., Wednesday, July 11, 2012.

**PRESENT**

David Hill, Chair  
John Tyner  
Jerry Callistein  
Don Hadley  
Kate Ostell  
Dion Trahan  
Jack Leiderman

**Absent:** None

**Present:** Councilmember Bridget Donnell Newton, Council Liaison  
Andrew Gunning, Assistant Director, CPDS  
Marcy Waxman, Assistant City Attorney  
Jim Wasilak, Chief of Planning  
David Levy, Chief of Long Range Planning

**I. REVIEW AND ACTION**

- A. Final Record Plat PLT2012-00517, James G. and Michael K. Fegan** - for the resubdivision of the existing deeded lot at 104 West Jefferson Street into two record lots in the R-90 Zone.

Chairman Hill asked if the material that was received today just before the meeting should be part of the public record, and if so, whether the Commission should take time to read it. The Commission agreed that such material should be included. The Commission took a break to read the new material, and reconvened at 7:45 PM.

Jim Wasilak presented the staff report and answered questions from the Planning Commission.

Robin Ziek, Historic Preservation planner answered several questions posed by the Commission.

Soo Lee-Cho, representing the applicants, Mr. and Mrs. James Fagan, stated that it is within the property owner's legal rights to request the additional lot to be created out of their property. She said there's nothing in the City's subdivision regulations that prohibits the resubdivision of an historic property and submitted a letter which supports their position and backs up the legal standards and case law. Ms. Lee-Cho talked about single site and multi-resource historic districts.

Finally, Ms. Lee-Cho mentioned that the school capacity issue is separate from the proposed subdivision application, and if there is support for the proposed lot resubdivision and there is no supermajority, the applicant requests to be put in the queue, which is allowable under the Adequate Public Facilities Ordinance (APFO).

The following offered Public Testimony in favor of the record plat:

**Mary van Balgooy**, Executive Director of Peerless Rockville Historic Preservation Inc., is in support of the proposed resubdivision. She said the structure was designated and not the environmental setting (grounds) according to the Maryland Historical Trust (MHT) forms submitted for historical designation. Ms. van Balgooy further stated that the proposed resubdivision of the property does not seriously impair the Prettyman House (104 W. Jefferson Street) or any other property in that neighborhood. She clarified many points on the historic designation of the property stating that the house and not the grounds were historic.

**Jack Gelin**, 105 S. Van Buren Street (for 35 years), supports the record plat and is concerned about the overgrown vegetation, which negatively affects the streetscape.

The following offered Public Testimony against the record plat:

**Harold Pskowski** of 117 S. Van Buren Street is in opposition to the record plat stating it does not comply with the current zoning ordinance.

**Jan Schiavone** of 118 S. Van Buren Street spoke in opposition, referencing the new zoning regulations for R-90 properties. She stated the proposed resubdivision does not adhere to the current Zoning Ordinance.

**James Pontius** of 128 S. Van Buren Street is opposed. He feels that people with larger lots are being "punished" because of the inconsistent interpretation of the Zoning Ordinance, and the environmental setting argument is not correct.

**Richard Green** of 124 S. Van Buren Street is not in favor and cited the recent HDC review that a 9,000 sq. ft. subdivision versus a 13,000 sq. ft. subdivision are equally bad.

**Robin Talbott** of 122 S. Van Buren Street is opposed, stating that the grounds are just as important as the structure of an historic property and that history cannot be recreated.

**Charles Phipps** of 131 S. Van Buren Street spoke in opposition, stating that the current zoning codes' revision should be applied to the application and it should be denied.

**Jim Pickel** of 135 S. Van Buren Street, spoke in opposition based on the current Zoning Ordinance, stating that the ambience and streetscape are reflected by the lot size and will not be preserved if the zoning ordinance is not adhered to. He feels there are other feasible ways to subdivide the lot.

## **DISCUSSION**

The Commission went into discussion and received instructions from Ms. Waxman, Commissioner Ostell asked Ms. Waxman for instructions on how to craft the motion, stating that she understands that by law the Commission must find a mistake, or change or new fact, based on the last time this case was heard. Ms. Ostell also asked what Ms. Waxman's opinion is in the use of the word "shall" versus "must."

Ms. Waxman explained that the current code defines that the words "shall," "may not" or "must" are always mandatory and not discretionary. The words "should" and "may" are permissive and the terms are not discretionary but are mandatory, so there basically is no difference.

She went on to state that the APFO waiver is based on a minor subdivision for single-unit residential use, and the finding to be made on approval is what is required under Section 25.21.22.b of the Zoning Ordinance. The Commission must make a finding that it is not feasible based on whatever the finding is. If they want to deny the application, they have to find there was a substantial change in fact or law, or that there was an error made to the law in 1998. The Commission has to find that it is feasible to maintain the average. They have to take a vote on the APFO separately and to approve or disapprove, they have to make the finding of feasibility that the ordinance maintains the average.

Commissioner Trahan moved, seconded by Commissioner Callistein, to approve the APFO Waiver, finding that the Commission finds that the average single unit detached home generates less than one student across all grades; therefore a new home built as part of a resubdivision will not have a significant impact on school capacity. The motion passed unanimously with a 7-0 vote.

Commissioner Tyner moved, seconded by Commissioner Trahan, to approve Final Record Plat PLT2012-00517 for the resubdivision of the existing deeded lot at 104 W. Jefferson Street into two record lots in the R-90 zone to include the Required Findings and

Recommendations found on pages 9 and 10 of the Staff Report, plus the recommended conditions listed at the bottom of page 10, which Commissioner Tyner read as follows:

1. That the average frontage of lots within 500 feet is 75.975 feet, and that the average lot area of lots within 500 feet is 15,394 square feet for all lots.
2. That the proposed larger lot, containing the historic Prettyman House, exceeds the average lot frontage and lot area of existing lots within 500 feet, as required by Sec.25.21.22.b. The proposed smaller lot, with a frontage of 80 feet, will exceed the average frontage of lots within 500 feet, and although it meets the minimum lot frontage requirement in the R-90 Zone, the proposed lot area is below the average area of lots within 500 feet.
3. That 48 of the 83 lots within 500 feet have frontages of 80 feet or less in width. Six lots across South Van Buren Street and one lot on the same side of South Van Buren Street are 80 feet or less in width. Therefore, with regard to lot frontage, the proposed smaller lot will have a similar frontage as lots in the immediate vicinity.
4. That the plat maintains, to the extent feasible, the average area requirements of Sec. 25.21.22.b, due to the nature of the historic Prettyman House and associated accessory structures located on the larger lot. Strict adherence to Sec. 25.21.22.b is not feasible without disturbance to such historic structure, environmental setting, and associated accessory structures.
5. That the proposed unequal division provides for further separation of new construction on the smaller lot from the historic Prettyman House. In addition, the potential size of new construction on the smaller lot is less than what would be possible with an equal division of the property.
6. That the average lot area of the two proposed lots on the plat, which is 13,769 square feet, exceeds the average area for residential lots within 500 feet, which is 13,321 square feet.
7. That many properties on the same side of South Van Buren Street are larger due to assembly of smaller lots into a single property.
8. That both lots meet or exceed the minimum standards for lots in the R-90 Zone.
9. That future construction on both lots, including construction of the new home, landscaping, trees and other improvements will be subject to Historic District Commission review and approval.

## CONDITIONS

1. That the Plat be revised to make modifications/additions, as identified by Planning Commission or Staff.
2. That an NRI/FSD be submitted to the City Forester for approval prior to the recordation of the plat.
3. That the Final Record Plat be submitted in an appropriate electronic format as specified in Section 25.21.10.d of the City of Rockville Zoning Ordinance.

The motion passed on a 5-2 vote (Commissioners Hill and Leiderman voted No).

Chairman Hill said a written opinion will be generated which will serve as the official opinion of the Commission. It will be signed and dated after review by the Commission Chair.

- A. Use Permit USE2006-00702, 900 Rockville Pike**, time extension for Use Permit, for a one-year time extension to extend the implementation period of the approved Use Permit allowing a 12,574 square foot retail furniture sales building from July 25, 2012 to July 25, 2013 at 900 Rockville Pike.

Jim Wasilak presented the staff report.

**Joel Danches**, applicant and property owner, stated that he became the property owner three days ago and would like a time extension to work out the details of the proposed furniture showroom and other logistical issues with neighboring storefronts.

**Christina Ginsburg**, President of the Twinbrook Citizens Association, stated her concern over the traffic in and out of the property.

Commissioner Ostell moved, seconded by Commissioner Callistein, to approve USE2006-00702, for a one-year time extension with the Finding of Good Cause. The motion passed unanimously with a 7-0 vote.

- B. Site Plan STP2012-00112, 1900 Chapman Project Owner, LLC**, for the development of the former Syms property with 658 multi-unit residential dwellings, first floor amenity space, first floor office use tenant space and associated parking in the MXTD Zone at 1900 Chapman Avenue.

Bobby Ray began to present the staff report.

**Sam Shipkovitz** interrupted the presentation by informing the Commission that the notification signage on the property was inaccurate; the action noted was for an "Area Meeting" located in the Black-Eyed Susan room this evening.

**Nancy Reglin**, on behalf of the applicant, stated that notifications were sent to over 600 residents as well as the adjacent property. She said that the date was changed but was unsure if the location was updated.

**Christina Ginsberg**, President of the Twinbrook Citizens Association, stated that prior meeting notices were placed in less-than-desirable locations but were not an issue.

Jim Wasilak volunteered to view the sign and later confirmed that the date and time were accurate; however, the sign indicated "Area Meeting" in the Black-Eyed Susan Conference Room", which were inaccurate.

The Commission postponed the item until the following meeting to allow for accurate notice to be provided.

## **II. REVIEW AND RECOMMENDATION**

**Annexation ANX2012-00144**, Commission preliminary review of Annexation Plan for Shady Grove Road.

Manisha Tewari presented the Staff Report and answered questions from the Commission. She also informed the Commission that a public hearing will take place on July 25<sup>th</sup>. The Commission will formulate a recommendation at that meeting.

## **III. COMMISSION ITEMS**

- A. Staff Liaison Report – Mr. Gunning updated Commission on next meeting and notified the Commission of a joint meeting with Mayor and Council on July 23<sup>rd</sup>.
- B. Old Business - None
- C. New Business – Commissioner Callistein suggested to update the Rules of Procedure
- D. Minutes - None
- E. FYI Correspondence - None

## **V. ADJOURN**

There being no further business Commissioner Trahan moved, seconded by Commissioner Leiderman, to adjourn the meeting at 11:38 p.m.

Respectfully Submitted,

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Sandra Y. Driver, Commission Secretary